IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3181 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GALIABHAI DIPAKTARA F/O LATE KHAILABHAI GALIABHAI KATARA
Versus
MANAGING DIRECTOR

Appearance:
1. First Appeal No. 3181 of 2001
MR RAJESH K SHAH for the appellant
Mr. K.J. Macwan, for
M/S TRIVEDI & GUPTA for Respondents No. 1-2

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.H.KADRI

Date of decision: 15/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. In this appeal, notice was issued to the respondents for summary disposal. The respondents are served and have appeared through their learned counsel.

2. Appeal is admitted. Learned counsel, Mr. K.J. Macwan for M/s. Trivedi & Gupta, waives service of notice in the appeal on behalf of the respondents.

3. This is an appeal under Section 30 of the Workmen's Compensation Act, 1923, at the instance of the original applicant-workman, challenging the judgment and award dated April 29, 2000, of the learned Commissioner for Workmen's Compensation, wherein no interest has been awarded. It is understood that refusal to award any penalty is not the subject matter in the present appeal.

4. As aforesaid, the short question in the present appeal is whether the original applicant-workman was entitled to any interest on the amount of compensation awarded to him under the provisions of Section 4-A of the Workmen's Compensation Act, 1923 [prior to its amendment in 1995].

5. On a plain reading of Section 4-A(3), it becomes obvious that the Commissioner has power to direct the employer to pay interest at the rate of 6% per annum on the amount due where the employer is found to be in default in paying the compensation due under the Act within one month from the date it fell due. On the facts of the case, it is an admitted position that the compensation was not paid by the respondent-employer within one month from the date it fell due, namely, the date of the accident.

6. The learned Commissioner has refused to allow interest on its own observation that the delay in disposing of the proceeding before the Commissioner for Workmen's Compensation was apparently on account of the applicant itself. The learned Commissioner has, therefore, found that the employer had not committed any delay and on this ground refused to allow interest. It is, therefore, obvious that the learned Commissioner for Workmen's Compensation mistook 'the delay' to mean the delay in disposal of the proceeding before itself rather than delay on the part of the employer in making the payment due to the workman within 30 days of such payment becoming due. This is apparent from a plain reading of the Section itself.

7. As against this, the learned counsel for the respondents-employer sought to contend that this appeal is not maintainable within the meaning of Section 30 of the Workmen's Compensation Act. However, looking to the facts of the case, we found that the learned Commissioner for Workmen's Compensation has erroneously interpreted the provision of Section 4-A(3) of the Workmen's Compensation Act, 1923, and it was on this account that it has denied grant of interest to the workman. This is not merely an error or law, but, if this view is permitted to stand, it would result in the perversity of justice.

8. Accordingly, the impugned judgment and award of the learned Commissioner of Workmen's Compensation is modified only to the extent that the appellant-original applicant shall be entitled to simple interest at the rate of 6% per annum on the amount found due and payable to him under the impugned award from the date when it became due upto the payment or realisation.

9. This appeal is, therefore, allowed with no order as to costs.

January 15, 2002 (Y.B. Bhatt, J.)

(M.H. Kadri, J.)
(swamy)